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Attorneys for Defendant  
 LOGITECH, INC.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

ARTHUR FULFORD, on behalf of himself  
 and all others similarly situated,

Plaintiff,

vs.

LOGITECH, INC., a California corporation,  
 and DOES 1-100, inclusive,

Defendants.

Case No. C 08-02041 MMC

DECLARATION OF PETER J. EVANS  
 IN SUPPORT OF DEFENDANT'S  
 RULE 12(b)(1) MOTION TO DISMISS  
 FOR LACK OF SUBJECT MATTER  
 JURISDICTION

Hearing Date: October 3, 2008  
 Time: 9:00 a.m.  
 Courtroom: 7  
 Judge: Hon. Maxine M. Chesney

Complaint Filed: April 18, 2008  
 Trial Date: None Set

I, Peter J. Evans, declare as follows:

1. I am the Director, Harmony Customer Experience & Support for Logitech, Inc. ("Logitech"). I make this declaration in support of Defendant's Rule 12(b)(1) Motion to Dismiss For Lack of Subject Matter Jurisdiction in the above-entitled action filed by

1 Plaintiff Arthur Fulford (“Fulford”). The facts recited in this declaration are based on my  
2 own personal knowledge and upon my review of Logitech’s business records and, if called  
3 as a witness, I could and would competently testify thereto under oath.

4 2. I have been the head of the Harmony support organization since January  
5 2002. My responsibilities generally involve ensuring that Logitech Harmony customers  
6 have convenient, timely access to comprehensive support information for Logitech  
7 Harmony products.

8 3. I hold a Higher National Diploma in General & Production Engineering  
9 from Guildford College of Technology, UK.

10 4. As Director of Harmony Customer Experience & Support, I am familiar with  
11 the design, manufacturing, marketing, advertising, sales, warranty, product support, and  
12 product returns relating to Logitech’s Harmony 1000 Advanced Universe Remote (the  
13 “H1000”) product at issue in the above-entitled action.

14 **Product Engineering, Manufacturing And Distribution Relating To The H1000**

15 5. The H1000 was engineered in or about 2006 by Logitech’s Harmony  
16 Remote Control Division located in Ontario, Canada.

17 6. The H1000 remotes are manufactured and packaged in China. Units bound  
18 for sales in the United States are then shipped directly to Logitech’s U.S. Distribution  
19 Center which is currently located in Olive Branch, Mississippi. Previously that facility was  
20 located in South Haven, Mississippi.

21 7. Logitech only sells the H1000 via selected “Channel Partners” – i.e.,  
22 primarily, certain wholesalers, brick-and-mortar retailers, online “e-tailers,” cataloguers,  
23 and others with whom Logitech has product distribution relationships. Logitech authorizes  
24 its Channel Partners to sell only new H1000s. An H1000 is considered “new” if it is  
25 unused, i.e., it has never been connected to Logitech’s Product Support System.  
26 Conversely, an H1000 is considered “used” if it has been connected to Logitech’s Product  
27 Support System.

28

1           8.       From its Mississippi-based distribution center (operated by a third-party  
2 contractor), Logitech sends new H1000s in their original product packaging to its Channel  
3 Partners. The Channel Partners, in turn, sell the new H1000s directly to end-use consumers  
4 throughout the United States or to retailers who in turn sell the new H1000s directly to end-  
5 use consumers throughout the United States. Logitech also sells H1000s via the Logitech  
6 website at ; such orders are then filled by one of Logitech's Channel Partners. Logitech  
7 obtains a monetary benefit from selling new H1000s to its Channel Partners.

8           9.       Logitech, however, derives no monetary benefit whatsoever from a private  
9 sale of a used H1000. Thus, Logitech would not derive any monetary benefit from a purely  
10 private resale resulting from a situation in which an individual who has previously  
11 purchased a new H1000 in its original packaging from one of Logitech's Channel Partners  
12 and who has subsequently connected the H1000 to the Logitech's product support computer  
13 system (the "Product Support System") later resells that same H1000 to an end-use  
14 consumer via eBay or to a friend or neighbor.

15                   **Advertising And Marketing Relating To The H1000**

16           10.      Logitech publicly announced the H1000 in a press release entitled, "A Touch  
17 of Luxury: Logitech Reinvents Harmony Remote with Touch Screen, Stunning Design,"  
18 issued September 12, 2006 in Denver, Colorado in connection with the Custom Electronic  
19 Design & Installation Association ("CEDIA") Exposition held in Denver in September  
20 2006. Logitech began selling the H1000 in or about January 2007.

21           11.      Logitech advertises and markets the H1000 product line in a variety of ways  
22 including via Logitech's website and via the product packaging for the H1000.

23           12.      Because Logitech and its Channel Partners only sell new H1000 products, all  
24 of Logitech's advertising and marketing efforts via its website, via the H1000's product  
25 packaging, and otherwise are directed exclusively towards potential and actual purchasers  
26 of new H1000s.

27           13.      None of the advertising on Logitech's website, on the H1000 product  
28 packaging, or elsewhere is directed toward or intended to influence potential or actual

1 purchasers of used H1000s. Likewise, none of Logitech's marketing efforts relating to the  
2 H1000 is directed towards or intended to influence potential or actual purchasers of used  
3 H1000s.

4 **Product Support Relating To The H1000**

5 14. Logitech provides product support relating to both new and used H1000s  
6 primarily from its Canada-based Harmony Support Group. Calls to Logitech's customer  
7 support service are initially fielded by Logitech's Harmony call centers located in Phoenix,  
8 AZ and Mississauga, Ontario, Canada. Where appropriate, customer calls are escalated to  
9 the Harmony office located in Mississauga, Ontario, Canada.

10 15. The Logitech website directs callers seeking to contact "Harmony Product  
11 Support" to dial the following toll-free non-California phone numbers during specified east  
12 coast times: "+1 866-291-1505," "Monday - Friday: 9am - 10pm EST" and "Saturday -  
13 Sunday: 10am - 5:30pm EST" (English) and "+1 800-499-3508," "Monday - Friday: 9am -  
14 7pm EST" (Spanish). See Logitech.com/index.cfm/595/&cl=us,en.

15 **The Specific H1000 Fulford Claims To Have Purchased**

16 16. Logitech maintains detailed records that track consumers' connections of  
17 their H1000s with Logitech's product support computer system (the "Logitech System") in  
18 order to assist H1000 users as they set up and use the H1000 and the devices it controls.

19 17. Logitech maintains detailed historical account and connection information  
20 relating to consumers' connections of their H1000s with Logitech's product support  
21 computer system (the "Product Support System") in order to better assist H1000 users as  
22 they set up and use the H1000 and related devices.

23 18. A unique user account number is automatically assigned each time an H1000  
24 is first connected to the Product Support System. When first connecting an H1000 to the  
25 Product Support System, an H1000 user creates a Login ID that is to be used each time that  
26 person seeks to access the Product Support System. If an existing H1000 user subsequently  
27 connects the same H1000 to the Product Support System using a newly created Login ID,  
28 the Product Support System will record such an event as a first connection and will thereby

1 automatically assign a new user account number to that person, even though the same  
2 person had previously connected the same H1000 to the Product Support System.

3 19. The Product Support System also records a unique product identification  
4 number or serial number (“Product ID Number”) for each H1000. The Product Support  
5 System recognizes the H1000-specific Product ID Number each time a given H1000 is  
6 connected to the Product Support System. In this way, Logitech is able track the  
7 connection and maintenance history of each H1000 that has ever connected to the Product  
8 Support System.

9 20. Logitech’s internal records indicate that the Plaintiff first connected an  
10 H1000 (the “at-issue H1000”) to the Product Support System on February 27, 2008,  
11 whereupon internal user account number 3288618 was automatically assigned to him. The  
12 Product Support System’s historical data relating to the at-issue H1000 indicates the  
13 following “first connect” activity:

<b>Date / Time of First Connect</b>	<b>User ID</b>	<b>User</b>
02/17/07 00:00 AM	843295	USER “A” [a female]
01/04/08 05:20 AM	3027351	USER “A” [a female]
01/05/08 11:05 PM	3041289	USER “B” [gender unknown]
02/27/08 08:04 PM	3288618	Plaintiff

18 21. Logitech records further indicate the following with respect to the at-issue  
19 H1000:

- 20 a. The at-issue H1000 was engineered in Canada.  
21 b. The at-issue H1000 was manufactured in China on December 12,  
22 2006, and was subsequently shipped to Logitech’s Mississippi distribution center.

23 **The H1000 Accounts Established By USER “A” [a female]**

- 24 c. The at-issue H1000 was first connected to the Product Support  
25 System on February 17, 2007 by USER “A” (a female) from a computer located in  
26 Riverview, Florida. At that time, the Product Support System automatically recorded a  
27 unique Product ID Number with respect to the at-issue H1000.  
28

1           d.       USER "A" created her first Harmony account on Feb 16, 2006 and  
2 connected a Harmony 880 Advanced Universal Remote ("H880") at that time. The Product  
3 Support System assigned User ID 843295 to USER "A" who, in turn, created a Login ID in  
4 connection with her account. She then upgraded a year later (on February 17, 2007) to the  
5 H1000 Remote. The devices that USER "A" had already set up in connection with her  
6 H880 were transferred at that time to her H1000, and she also added new devices to her  
7 H1000 account in mid-February 2007.

8           e.       Logitech's records indicate when USER "A" registered the at-issue  
9 H1000 with Logitech, she reported that the at-issue H1000 was purchased by using  
10 PriceGrabber.com, an online price comparison service that purports to assist consumers in  
11 identifying the seller offering the best price for a given consumer product.

12           f.       The Product Support System indicates that in mid-February 2007,  
13 USER "A" set up a variety of electronic devices via her February 17, 2007 H1000 account.

14           g.       Product Support System data reflects that no lighting control was  
15 ever set up with respect to the H1000 account established for USER "A."

16           h.       Product Support System data further reflects that, on or about  
17 January 4, 2008, USER "A" created a second account as regards the at-issue H1000 with  
18 USER "A." The Product Support System assigned User ID 3027351 to USER "A" in  
19 connection with her second H1000 account. This was an 'empty account,' in other words,  
20 no devices or activities were set up. USER "A" then updated the remote to apply the new  
21 setting which had the effect of clearing out all devices and activities she had previously set  
22 up, leaving the unit blank of her personal information.

23           **The H1000 Account Established By USER "B" [gender unknown]**

24           i.       The second person to connect the at-issue H1000 to the Product  
25 Support System was USER "B" [gender unknown], who did so – also from a computer  
26 located in Tampa, Florida – on or about January 5, 2008; i.e., one day immediately  
27 following the date USER "A" removed her personal information from the unit by creating a  
28

second H1000 account. The Product Support System assigned User ID 3041289 to USER “B” who, in turn, created a Login ID in connection with the H1000 account.

j. The Product Support System indicates the following specific electronic devices that were set up via the H1000 account that USER “B” established on January 5, 2008, and the specific dates and time when those devices were first set up:

User Device	Date / Time	Manufacturer	Model
20107558: TV	01/06/08 04:35 AM	Vizio	GV52L FHDTV10A
20113001: DVD	01/06/08 04:35 AM	Arirang	AR-18K
20113030: Satellite	01/06/08 03:50 AM	Viewsat	VS-2000 Ultra
20293878: Kitchen Light	01/11/08 12:55 AM	Lutron	MIR-600

k. As indicated above, Product Support System data reflects that a lighting device – i.e., a Lutron MIR-600 – was set up on February 11, 2008 in connection with the H1000 account established by USER “B.” The Lutron MIR-600 uses infrared (“IR”) technology (and, therefore, not Z-Wave lighting control technology).

l. Product Support System data relating to the account established by USER “B” further reflects that the at-issue H1000 logged in to the Product Support System on sixteen (16) occasions.

#### **The H1000 Account Established By The Plaintiff**

m. The third person to connect the at-issue H1000 to the Product Support System was the Plaintiff, who did so on or about February 27, 2008. The Product Support System assigned User ID 3288618 to the Plaintiff who, in turn, created a Login ID in connection with his H1000 account. The Product Support System indicates the following specific electronic devices that were set up via the Plaintiff’s H1000 account that he established on February 27, 2008, and the specific dates and time when those devices were first set up and, as indicated in bolded lettering, when certain of those devices were later deleted from the account:

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User Device ID	Date / Time	Manufacturer	Model
21828400: TV	02/28/08 12:35 AM	Gateway	GTW L30M103
21828398: Projector	02/28/08 12:24 AM	Panasonic	PT-LB50NTU
21828402: DVD	02/28/08 12:24 AM	LG	LDA-511
21828401: Mini System (CD, Radio, Cassette)	02/28/08 12:35 AM	Bose	Wave Radio/CD
21828454: Media Center PC	02/28/08 01:39 AM	Dell	Inspiron XPS-M1330
21828399: Game Console	02/28/08 12:24 AM	Nintendo	Wii
21828403: Light Controller	02/28/08 12:24 AM	X10	Infrared Mini-Controller (IR543)
21828403: Light Controller <b>DELETED FROM ACCOUNT THIS DATE</b>	03/18/08 01:44 PM	X10	Infrared Mini-Controller (IR543)
22405854: Light Controller	03/18/08 02:09 PM	Intermatic	HA-03
22405914: Light Controller	03/18/08 02:11 PM	Intermatic	HA-03
22405854: Light Controller <b>DELETED FROM ACCOUNT THIS DATE</b>	08/13/08 05:28 AM	Intermatic	HA-03
22405914: Light Controller <b>DELETED FROM ACCOUNT THIS DATE</b>	08/13/08 05:28 AM	Intermatic	HA-03

n. As indicated above, Product Support System data reflects that on February 28, 2008 when the Plaintiff first set up the specific electronic devices to be controlled by the at-issue H1000, he set up infrared (“IR”) lighting, not Z-Wave lighting. Specifically, on February 28, 2008, Plaintiff added an X-10 brand Infrared Mini-Controller (IR543) for lighting control. This device is described as follows on the X10.com website at [http://www.x10.com/products/x10\\_ir543.htm](http://www.x10.com/products/x10_ir543.htm):

“A plug-in controller for turning on and off X10 automation modules. Also accepts commands from X10 format infrared remote controls and turns them into powerline signals. . . [letting] you control lights [and] appliances from your existing [remote] . . .”

o. The above Product Support System data also reflects that the X-10 Infrared Mini-Controller (IR543) was deleted from Plaintiff’s H1000 account on March 18, 2008, at 1:44 p.m.

p. The above Product Support System data further reflects that, within less than 30 minutes after the X-10 Infrared Mini-Controller (IR543) was deleted from the account, two Intermatic HA-03 lighting control devices – were set up at 2:09 p.m. and 2:11



1 p.m., respectively. An Intermatic HA-03 lighting control device uses Z-Wave lighting  
2 control technology. Product Support System data further reflects that the aforementioned  
3 Intermatic HA-03 devices were the first and only Z-Wave devices of any type associated  
4 with the Plaintiff's H1000 account.

5 q. The above Product Support System data also reflects that two  
6 Intermatic HA-03 lighting control devices were deleted from Plaintiff's H1000 account on  
7 August 13, 2008, at 5:28 a.m.

8 r. Furthermore, despite Plaintiff's claim that he "sent an email to  
9 Logitech's customer service address, listed on their website, inquiring as to the problem he  
10 was experiencing," Product Support System data reveals that no such email was ever  
11 received from the Plaintiff.

12 s. Based on the aforementioned Product Support System data  
13 associated with the H1000 accounts established by USER "A" and USER "B," the at-issue  
14 H1000 was a used H1000 as of late February 2008 when Plaintiff purportedly purchased it.

15 t. Logitech derived no monetary benefit whatsoever as a result of the  
16 alleged February 2008 purely private resale of the at-issue H1000 to the Plaintiff.

### 17 **Logitech Forums**

18 23. The Logitech website "home page" (at ) prominently displays an area  
19 labeled "Support Center" which, in turn, prominently displays several links including a link  
20 entitled "Forums." Clicking on the "Forums" link brings a website visitor to a web page  
21 entitled, "Logitech Forums," which contains "posts" by Logitech website visitors on several  
22 "message boards" concerning various aspects of Logitech's products including the H1000.

23 24. A "Search" bar is prominently displayed near the top of the "Logitech  
24 Forums" web page. Entering the terms "H1000" and "Z-Wave" in the "Search" bar yields  
25 ready access to over twenty "discussion threads" spanning the period of February 21, 2007  
26 through February 17, 2008. All of these "discussion threads" were displayed within

27 ///

28 ///

1 "Logitech Forums" before February 27, 2008 when the Plaintiff established his H1000  
2 account with Logitech.

3 25. On June 4, 2007, the following message was posted within "Logitech  
4 Forums" by a representative of Logitech's Harmony Support Team from its Mississauga,  
5 Ontario, Canada location:

6 I apologize for not previously posting a response to this discussion thread.  
7 This delay in posting may have caused some confusion regarding Z-Wave  
8 lighting capabilities of the Harmony 1000 and so I would like to clarify the  
9 situation by offering an official response on behalf of Logitech.

10 The Logitech Harmony 1000 was announced in September 2006 at CEDIA.  
11 Although Z-Wave lighting was never formally announced, the plan at that time  
12 was to have full Z-wave support of third-party Z-Wave Modules. Since that  
13 date Logitech has made the decision not to offer control of Z-Wave  
14 compatible lighting and home automation equipment for the Harmony 1000  
15 remote. The company is focused instead on improving the interaction with  
16 the Harmony 1000 as it relates to the control of audio & video entertainment  
17 devices.

18 Z-Wave lighting control will continue to be supported for the Harmony 890,  
19 Harmony 895 & Harmony 890 Pro remote control.

20 Kindest Regards,

21 The Harmony Support Team

22 Kindest Regards,

23 Don

24 See: [http://forums.logitechio.com/logitech/board/message?board.id=general\\_remotes&thread.id=4695](http://forums.logitechio.com/logitech/board/message?board.id=general_remotes&thread.id=4695).

25 I declare under penalty of perjury under the laws of the United States that the  
26 foregoing is true and correct and that this declaration was executed this 28 day of August,  
27 2008, at Mississauga, Ontario, Canada.  
28



Peter J. Evans